

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6942

Petition of Christie Tolstoy vs. Central Vermont)
Public Service Corporation in re: use of)
herbicides in connection with Central Vermont's)
maintenance of its utility rights of way)

Order entered: 8/31/2004

I. REPORT AND RECOMMENDATION

Pursuant to 30 V.S.A. § 8, and based on the record before me, I present the following report and recommendation to the Public Service Board ("Board").

By letter dated August 11, 2003, Christine Tolstoy petitioned the Board for an injunction to prevent Central Vermont Public Service Corporation ("CVPS") from applying herbicides, by either spraying or painting, near her house in Weston, Vermont ("Petition").¹ On August 14, 2003, CVPS agreed to refrain from applying herbicides in the towns of Landgrove, Londonderry and Weston, until the issues raised in the Petition were resolved.²

A hearing in this matter before me, as Hearing Officer, was scheduled for April 30, 2004. However, no hearing was held because, on April 26, 2004, Ms. Tolstoy filed a withdrawal of her claim against CVPS.³ Then, on April 26, 2004, CVPS filed a motion to dismiss this docket, with prejudice.⁴

On May 25, 2004, a report and recommendation was issued in which I recommended that Ms. Tolstoy's withdrawal of her claim be accepted, and CVPS' motion to dismiss, with prejudice, be denied.

1. Letter of Christie Tolstoy, 8/11/03, at 1.

2. Letter of Kenneth C. Picton, 8/14/03.

3. Letter of Christie Tolstoy, 4/22/04. This letter was sent by fax to the parties and the Board on April 22, 2004, but the hard copy was not actually received at the Board for filing until April 26, 2004.

4. The Vermont Department of Public Service ("Department") filed a notice of appearance in this docket. The Department did not comment upon CVPS' April 26 motion to dismiss.

Comments on the Report and Recommendation were filed by CVPS on June 3, 2004, by the Department on June 4, 2004, and by Ms. Tolstoy on June 7, 2004.

On June 9, 2004, Ms. Tolstoy filed a response to the comments made by CVPS.

On June 11, 2004, CVPS filed a reply to Ms. Tolstoy's response.

On June 21, 2004, Ms. Tolstoy filed additional comments.

On June 21, 2004, a status conference, via telephone, was held. Participating were: Helen Fitzpatrick, Esq., and Kenneth Picton, Esq., for CVPS; Jeremy Dworkin, Esq., for Christie Tolstoy; and Geoffrey Commons, Esq., for the Department. At the status conference the parties indicated that they would be settling the case.

On July 16, 2004, CVPS filed a motion to dismiss, which included a representation that Jeremy Dworkin, on behalf of Ms. Tolstoy, joined in the motion to dismiss. The parties' agreement to dismiss this case is based upon a settlement between them that addresses the issues of concern to the parties, including the one-mile no-spray zone, the manner of notice to Ms. Tolstoy about spraying, and termination of the agreement upon Ms. Tolstoy requesting different accommodations from CVPS.⁵

Because the parties have reached an agreement that resolves their concerns, I recommend that the Board grant the motion to dismiss filed by CVPS on July 16, 2004. I further recommend that this docket be closed.

This proposal for decision has not been circulated to the parties for comment because no party is adversely affected by it. 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 31st day of August, 2004.

s/Judith M. Kasper
Judith M. Kasper, Esq.
Hearing Officer

5. A copy of this agreement was filed with the Board on August 5, 2004.

II. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The conclusions and recommendations of the Hearing Officer are adopted.
2. The Motion to Dismiss filed by Central Vermont Pubic Service Corporation on July 16, 2004, is granted.
3. This docket shall be closed.

Dated at Montpelier, Vermont, this 31st day of August, 2004.

<u>s/Michael H. Dworkin</u>)	
)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: August 31, 2004

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.